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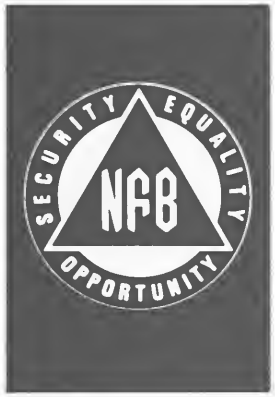

JULY, 1977

VOICE OF THE NATIONAL FEDERATION OF THE BLIND

THE BRAILLE MONITOR

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CONTENTS

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KENNETH JERNIGAN, *President*

NATIONAL OFFICE
218 RANDOLPH HOTEL BUILDING
FOURTH & COURT STREETS
DES MOINES, IOWA 50309

WASHINGTON OFFICE
212 DUPONT CIRCLE BUILDING
1346 CONNECTICUT AVENUE, NW.
WASHINGTON, D.C. 20036

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DONALD McCONNELL, *Editor*

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NOTE

Douglas MacFarland, Director of the Office for the Blind and Visually Handicapped in the Department of Health, Education, and Welfare, died of a heart attack May 4, 1977. The June issue of the *Monitor*, which was mailed to subscribers in the middle of May, contained an article which criticized Dr. MacFarland in his official capacity. Of course we had no way of knowing, and did not intend, that this would be distributed posthumously, and we apologize for any pain this may have caused his family or friends. When we received word of Dr. MacFarland's sudden death, the printing of all three editions of the *Monitor* was already nearing completion, and it was impossible to recall them. □

THE NFB GOES TO COURT TO DEFEND BLIND VENDORS: THE JESSIE NASH CASE

A newsstory published around the country in late April and written by Stewart Lytle, staff writer for the Scripps-Howard newspapers, began as follows:

"As recently as February 14, Major General C. H. Schmid of the Marines wrote a friend in the Georgia legislature praising the work of Mrs. Jessie Nash.

"Mrs. Nash 'is truly an outstanding person and her work here at the base during the past year leaves nothing to be desired,' wrote Schmid.

"Other Marine Corps brass echoed Schmid's sentiments about Mrs. Nash, commenting not only on her excellent work but her 'friendliness and sincere congeniality toward everyone.'

"Colonel William Weise, her former supervisor, wrote that she demonstrated superior managerial talents despite her handicap.

"Mrs. Nash is legally blind. Until last Friday she ran a snack bar at the Marine Corps Supply Depot in Albany, Georgia."

Most *Monitor* readers have never heard of Jessie Nash, but she is one of us—that is, she is blind and a member of the National Federation of the Blind of Georgia. For three years she was a vending facility operator in the Georgia program. On April 15, at 3:30 p.m., her snack bar at the Marine Supply Center was closed, putting her and her husband Hugh out of work, despite the clear language of the Randolph-Sheppard Act that blind persons are to have a priority in the operation of vending facilities on all federal property.

Jessie's situation is not unique. Blind vendors have sometimes been regarded as a "favored class," but if this is true, it is also true that they are a vulnerable class. If the state licensing agency sees its role as advocacy, and if its personnel are convinced that the blind can produce on terms of equality with the sighted, the blind vendors can expect to be offered lucrative business opportunities with relative security.

If, on the other hand, the licensing agency believes that "anything is good enough for the blind," the chances to advance and the challenges to succeed will be few and far between. This is what Jessie Nash found when, in January, the word began to circulate that officials on the Marine Supply base wanted her snack bar converted to a full-line cafeteria.

This, in itself, was all right since Jessie Nash had several years of successful experience in cafeteria management; but the problem arose when the Georgia Cooperative for the Blind (the unit within the state department of vocational rehabilitation responsible for managing the vending facility program in Georgia) decided that it would not contest the Marine Corps decision, nor would it submit a bid for the operation of the cafeteria, even though it had been offered the opportunity to do so.

How often have we been told by some of the agencies that it is tough to find decent vending locations, only later to learn that if the agencies had been more aggressive, the locations were there for the asking? This was where matters stood in late January. The Marine Corps had made its decision and the Georgia Cooperative for the Blind was prepared to accept it—never mind the injustice which would be done to one of its finest blind vending facility managers.

Section 5(a) of the Randolph-Sheppard Act as amended provides that any blind vendor dissatisfied with any decision made by a state licensing agency shall, upon request, have a full evidentiary hearing. On February 14, after all previous appeals to state and federal officials had failed, Jessie Nash requested a hearing. Ten days later she was told that one would be scheduled and that she would be notified. By April 15, at 3:30 p.m., she had heard nothing. Her snack bar was closed.

Along the way Jessie sought help and advice from the National Office of the Federation. Thus, on April 4, in recognition that all other attempts had failed, a letter was sent by James Gashel to President Carter (the case did, after all, involve Georgia) as follows:

"DEAR PRESIDENT CARTER: Jessie Nash is a blind Georgian who, along with her husband Hugh, operates a vending facility on the grounds of the Marine Supply Depot at Albany, Georgia. The facility she operates was established under the terms of the Randolph-Sheppard Act as amended, which was enacted by the Congress "for the purposes of providing blind persons with remunerative employment, enlarging the economic opportunities of the blind, and stimulating the blind to greater efforts in striving to make themselves self-supporting . . . ." Mrs. Nash and her husband have successfully operated vending facilities on the base for a good number of years.

April 15, 1977, (11 days from now) will be their last day unless some emergency action is taken by the federal government and the state of Georgia. Without your personal intervention that action will most likely not be taken, and the Nashes will (despite their own vigorous efforts to remain productive) move from the ranks of the employed and self-supporting blind to the status of welfare recipients. This, in spite of the congressional mandate set forth in the words of the Randolph-Sheppard Act quoted above.

"What we have here is a case of bureaucratic unresponsiveness. Jessie and Hugh Nash are about to be victims of it, but the incident affects all blind people, and especially those nearly 3,800 blind persons who operate vending facilities in the Randolph-Sheppard program. Because of the way this legislation is written, it is essential that a smooth working relationship obtain between a number of federal agencies (especially the General Services Administration, the Defense Department, and the Postal Service) and state rehabilitation agencies for the blind. Where cooperative arrangements develop, blind individuals receive lucrative business opportunities; but where snags arise, the blind (not the federal or state agencies) are the ones who pay the price.

"According to a letter of March 17, 1977, the Marine Corps Supply Depot at Albany proposes to terminate the Randolph-Sheppard vending facility operated by Jessie and Hugh Nash. This decision has been made because of the alleged necessity for full-line hot food cafeteria service, replacing the present snack bar service provided by the Randolph-Sheppard facility. It is alleged (although I do not have the evidence to document it) that when Marine Corps officials determined that a full-line cafeteria would be needed, they offered the operation to the state agency for the blind which handles Randolph-Sheppard facilities (the Georgia Cooperative for the Blind), but the Coop declined, saying that the cafeteria could not be a money-making operation. Taking another view, there are also those who argue that the Marines Corps deliberately maneuvered in such a manner as to discourage the Coop from bidding on the cafeteria, thus allowing a contract to be let

to a private food service provider, and keeping the blind from a business opportunity which should be theirs under the law. Whatever happened, the Nashes will be out on April 15 unless something is done.

"Above I quoted the purpose for the Randolph-Sheppard Act. Another section of that act reads:

"'In authorizing the operation of vending facilities on federal property, priority shall be given to blind persons licensed by a state agency as provided in this act; and the Secretary . . . shall, after consultation with the administrator of General Services and other heads of departments, agencies, or instrumentalities of the United States in control of the maintenance, operation, and protection of federal property, prescribe regulations designed to assure that (1) the priority under this section is given to such licensed blind persons . . . and (2) wherever feasible, one or more vending facilities are established on all federal property to the extent that any such facility or facilities would not adversely affect the interests of the United States.'

"That law was originally passed in 1936, amended once in 1954, and substantially amended in 1974. For more than two years we waited for the Ford Administration to promulgate the regulations referred to in the section just quoted. On March 23, 1977 (two months and three days after you took office), those regulations were published. They provide that the priority shall go to blind persons in the establishment of vending facilities (including cafeterias) on federal property. What an irony it would be indeed if the mandate of the Congress and the very regulations published under your Administration were to be so flagrantly violated in your own home state of Georgia, as they are about to be if the Nashes are put out of their business.

"All through the campaign (as you visited with people of America in our homes, villages, small towns, and large cities) you promised us responsive government. We do not wish to get entangled in the bureaucratic buck-passing between the Marine Corps and the state of Georgia or vice versa. All we know is that the intent of Congress and the intent of your own regulations are about to be infringed upon, and more importantly, we know that a blind woman and her husband are about to be added to the welfare rolls simply because of the unresponsiveness of the state and federal governments.

"During the campaign you also issued a paper on disabilities. We liked what you said. You pledged to enforce the law and stated emphatically: 'In the next Administration the disabled will not meet the Secretary of HEW in a courtroom but around a conference table to jointly plan policy.' Then in a closing statement you added: 'Our nation has a long agenda in this area to address, and we have much lost time to make up for. We must begin again. If we neglect the abilities or rights of even one person, it does not just hurt that person. It hurts us all.'

"Mr. President, we of the National Federation of the Blind are trying to help you keep these commitments. We do not wish to use the courts to force your Administration to uphold the law, but our right to business opportunities on federal property is clear under the Randolph-Sheppard Act, and we will defend ourselves, if necessary.

"The time is short. Jessie and Hugh Nash have until April 15. On this issue, the question is not do you as President have the power or authority to do anything to save their jobs. The law and regulations are both in place. For their sake and the hope of all the blind, we urge you to act with all deliberate speed.

"Very truly yours,

"JAMES GASHEL,
"Chief, Washington Office."

Unfortunately, the response from the White House was less than encouraging. There was an appropriate amount of handwringing and expressions of regret. A report was even obtained from the general counsel of the Navy, but by April 15 at 3:30 p.m. there was no action. Maybe, too, there was the feeling that responsible officials in the

Department of Health, Education, and Welfare should deal with the situation. Senator Randolph (when he was contacted earlier on) had asked the Office for the Blind and Visually Handicapped to look into the matter since, after all, that office is responsible for administering the program at the federal level. The response was characteristic—this vending location was somehow found not to be a location under the Randolph-Sheppard Act.

When all else fails the blind have only themselves and the courts to look to for justice. The case of Jessie Nash is, again, proof that this is so. In 1940 the blind organized out of the need, in part, to defend themselves and to protect their rights under the law. In many a landmark case we have done just that, and now, in the case of Jessie Nash, our strength must be summoned once again.

On April 18 Jessie Nash and the NFB went to court. There was no alternative—it was either to fight or to be walked on like rugs. As President Jernigan has said, if this is our choice, we will fight, we will protect ourselves.

The full results, of course, are not yet in. This is only the beginning. What we can say is that while denying our motion for a temporary restraining order, which would have had the effect of placing Jessie Nash back in her vending facility during a hearing and possible appeal, the state has now granted her the full evidentiary hearing she is entitled to under the Randolph-Sheppard Act, and the case will inevitably go to arbitration. This will be the first arbitration proceeding under the 1974 amendments of the Randolph-Sheppard Act. It promises to be a precedent-setting case.

But as we embark on this new initiative on behalf of blind vendors, where are those other organizations which make such loud claims to represent blind vending facility managers? Where is the American Council of the Blind and its front organization the Randolph-Sheppard Vendors of America? We know where they are, somewhere down in the backwaters away from the action, away from the grass-roots blind. But we know where we are, and we know who we are, and we will never go back.

Undoubtedly there are those who have been thinking that the Federation is finished as a movement, that it doesn't have the money to survive. Let them take note. The blind can pay their own way, support their own organization, and collectively defend themselves. We can, that is, if we will all play a part in coming up with the financial resources to do it.

If our movement means anything it means that when blind people in need turn to their fellow blind for help we must be able to respond. Maintaining our ability to rise to the calls for help is, in fact, the great challenge which today faces the organized blind. Presently, although there has been belt-tightening, we are meeting that challenge and the future is encouraging; but we must never allow ourselves to think that the job ahead is easy or that it is not worth the effort. □

CIVIL RIGHTS FOR THE HANDICAPPED: POTENTIALS AND PERILS FOR THE BLIND

by JAMES GASHEL

The National Federation of the Blind has, for years, been a leading force in the campaign to achieve full civil rights for blind and other disabled citizens in America. This objective was central to the very founding of our movement. The work and writings of Jacobus tenBroek broke new ground in the arena of civil rights and have led to the adoption of white cane laws in approximately 30 states and the District of Columbia. Indeed, these laws created the legislative framework upon which more recent amendments to state civil rights acts have been built.

At the federal level, the legislative approach to guaranteeing civil rights for the blind and handicapped has been somewhat different. For years, in Congress after Congress, bills have been introduced to amend the basic Civil Rights Act of 1964 to expand its coverage to prohibit discrimination on the basis of handicap. For a variety of reasons (not the least of which is the reluctance by Congress to reopen many of the longstanding controversies surrounding civil rights) these bills have never moved.

As an alternative, the Congress approved, and the President signed, some limited civil rights provisions which were made a part of the Rehabilitation Act of 1973, as amended. Most readers are familiar with at least some aspects of these sections, contained in title V of the Rehab Act.

Section 501—"Employment of Handicapped Individuals"—establishes within the federal government an Interagency Committee on Handicapped Employees, which is to provide a focus for federal and other employment of handicapped persons and is to review the adequacy of hiring, placement, and advancement practices with respect to these persons by each agency in the Executive Branch of the federal government. Further, each agency is required to submit to the Civil Service Commission and to the Committee an affirmative action program plan to accomplish these employment goals.

Administratively, the Selective Placement Office in the Civil Service Commission has been given the responsibility for monitoring section 501. To date, no complaint procedures or enforcement mechanisms have been established. The Civil Service Commission has seen fit only to issue a letter to the other federal agencies advising them of their obligation under section 501.

Section 503—"Employment Under Federal Contracts"—has more teeth. It states that any contract in excess of $2,500 entered into by any federal agency shall contain a provision requiring that, in carrying out the contract, the contractor shall take "affirmative action to employ and advance in employment qualified handicapped individuals." This obligation also extends to subcontractors. Further, under section 503 it is specifically stated that the President shall implement this by promulgating regulations and that any handicapped person who believes that a contractor has failed or refuses to comply with these provisions may file a complaint with the Department of Labor, which shall promptly investigate and seek a resolution.

By any standard, the Labor Department has been far more vigorous in enforcing section 503 than has the Civil Service Commission in carrying out section 501. To date, there have been two sets of regulations promulgated under section 503. The later set (the one which is operable) was published in the *Federal Register* on April 16, 1975. It incorporates the earlier set of regulations, along with comments received from interested persons and organizations regarding the enforcement of section 503, and it also includes the 1974 amendments to the Rehab Act which changed (for the purposes of title V) the definition of "handicapped individual."

The Labor Department reports that it has investigated several thousand complaints brought by handicapped persons, and has obtained over $400,000 in back pay for the complainants. Approximately 115 of the complaints which have now been closed were from blind or visually impaired individuals. The focus of the Labor Department's effort to enforce section 503 is the investigation of individual complaints, as opposed to a "compliance review" which would take a broader look at the extent to which handicapped individuals are becoming employed in the work forces of government contractors. What this suggests is that the extent of the enforcement of section 503 will largely depend on our willingness to pursue complaints and demand thorough investigations.

Section 504—"Non-discrimination Under Federal Grants"—has the broadest application. The entire section is one declarative sentence which reads: "No otherwise qualified handicapped individual in the United

States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

This language is almost identical to the non-discrimination provisions of section 601 of title VI of the Civil Rights Act of 1964 and section 901 of title IX of the Education Amendments of 1972. Like those statutes, it establishes a government-wide policy against discrimination in federally assisted programs and activities—in this case, on the basis of handicap.

Since enactment in 1973, the major problem has been the failure of the federal government to enforce section 504. Many of us have felt that section 504 is a nice statement, as far as it goes, but that the best way to ensure full civil rights for the blind and handicapped would be to amend the basic civil rights statutes. By so doing, we could take advantage of the enforcement procedures already in place.

There is a danger is going the "separate" route because (as the Supreme Court has affirmed) separate is not equal. As Hazel tenBroek wrote in 1974: "I worry about the fact that we may be confronted with civil rights laws which are different and not equal to those of the rest of the population. When will the happy day arrive when physical handicaps will be considered at face value as characteristics like baldness, or red hair, or the marriage status, or the color of the skin, or the country of origin?"

Events surrounding the implementation of section 504 have proved these fears to be well-founded. First, of course, there was the delay. For more than two and a half years, no-one could figure out who in the federal government was charged with the responsibility of enforcing section 504. The Congress felt that certainly somebody should do it, and most people seemed to feel that the Department of HEW would be the likely place since (the thinking went) that is the primary agency which deals with the handicapped. Also, HEW does have a large Office for Civil Rights which enforces other civil rights provisions related to federal financial assistance. The bulk of the 1964 Civil Rights Act is enforced by the Equal Employment Opportunity Commission (EEOC) and the Justice Department. But it was apparently felt that section 504 (since it deals with the handicapped) was sufficiently different from the other legislation that it should fall entirely to HEW to enforce it.

The term "enforce" has been used here in its loosest sense. Actually, there was no enforcement at all, since there were no regulations. The enforcement effort mainly consisted of receiving a few complaints and acknowledging receipt of them by postcard. The Federation was involved in one or two of these, but we finally resorted to the courts in the Gurmankin case.

Then in April 1976, federal enforcement of section 504 was required in the form of an executive order (11914) issued by President Ford. For the most part, the executive order obligated each federal agency and department to enforce section 504 with respect to federal financial assistance administered by it. The order further designated the Department of HEW as the agency to coordinate this enforcement throughout the government. Of course HEW itself is directly responsible for ensuring that recipients of financial assistance under its own grant programs observe the provisions of section 504. But HEW was also to serve as the lead agency in what the executive order established as a government-wide enforcement effort.

The executive order also provided the basis on which the various federal departments and agencies could act to enforce section 504. Section 3 of the order states:

"(a) Whenever the appropriate department or agency determines, upon all the information available to it, that any recipient of, or applicant for, federal financial assistance is in non-compliance with the requirements adopted pursuant to this order, steps to secure voluntary compliance shall be carried out . . . .

"(b) If voluntary compliance cannot be secured by informal means, compliance with section 504 may be effected by the suspension or termination of, or refusal to award or continue, federal financial assistance or by other appropriate means authorized by law . . . ."

On May 17, 1976, the Department of HEW took the first major step toward establishing enforcement procedures. It published a "notice of intent to issue proposed rules" in the *Federal Register.* The notice itself consisted of some 15 key issues upon which the department solicited comment. Attached to the notice was a draft regulation which HEW had developed and was considering issuing as proposed rules.

The *Federal Register* notice set up the first round of public comment and clearly established that those who had warned against separate civil rights laws for the handicapped knew what they were talking about. In fact, the approach taken by HEW had an ominous portent. From the very outset the notice sought to draw a distinction between section 504 and other major civil rights statutes by pointing to what was regarded as the inherent inequality of the handicapped. The exact statement from the notice reads: "The premise of both title VI and title IX is that there are no inherent differences or inequalities between the general public and the persons protected by these statutes and, therefore, there should be no differential treatment in the administration of federal programs. The concept of section 504, on the other hand, is far more complex. Handicapped persons may require different treatment in order to be afforded equal access to federally assisted programs and activities, and identical treatment may, in fact, constitute discrimination."

On June 14, 1976, the Federation responded to the issues raised in the May 17 *Federal Register* publication. We began (although we were not invited to do so) by commenting on the department's basic premise—that is, that the handicapped are unequal:

"We begin by challenging the presumption that section 504 'differs conceptually' from the other two civil rights provisions administered by the department. Challenging this premise is fundamental, since the strength and character of the final regulation will hinge on the accuracy of the basic assumptions. In our judgment the . . . draft regulation tends to suggest that civil rights for women and minorities are to be viewed in one light while civil rights for the handicapped are another matter altogether. If this erroneous notion is allowed to prevail at the department, the handicapped can be sure that equal opportunity and non-discrimination will remain a hope rather than a reality.

"The civil rights provisions of title VI, title IX, and section 504, it seems to us, are based on the root concepts of equal opportunity and non-discrimination. Therefore, we believe that it is critical to begin by presuming that equal treatment will be appropriate and can only be waived when substantial evidence exists that a particular physical characteristic prevents the achievement of equality through identical treatment.

"Indeed, this is the presumption which is followed in the actual administration of titles VI and IX. For example, the title IX regulations begin by presuming that persons must be treated identically regardless of sex but permit different but comparable treatment in athletics programs, housing services, and locker and bathroom facilities. Such different treatment is allowed to the extent that it is necessary to achieve equal opportunity for all persons regardless of their sex. It seems, therefore, only just that the department should take the same position with respect to civil rights for the handicapped—that is, equal treatment of the handicapped and non-handicapped alike must be required unless it can be proven substantially by the recipient that different treatment of the handicapped is necessary to achieve equal opportunity."

But this was only the opening salvo of our extensive comments. It was obvious that real danger was in store if this philosophy

of second-class status were to prevail. The provisions of the draft regulation regarding admission of handicapped students to colleges and universities clearly set forth the impact of the HEW presumption. This was specifically discussed in our June 14 letter as follows:

"Repeatedly, in reviewing the draft regulation, one encounters the department's negative philosophy about the handicapped. This negativism is epitomized in section 84.42(c) which reads: *'Different admission criteria.*—The recipient may . . . apply criteria for the admission of handicapped persons which differ from the criteria applied to non-handicapped persons where such criteria are useful as predictors of completion of the education program or activity in question or of success in the occupation or profession for which the education program is designed to prepare students.'

"This provision for different admission requirements is outrageous and will undoubtedly result in more discrimination against the handicapped than now exists. It opens the door to tremendous abuse. Traditionally, there are those who have contended that sight is a necessary criterion for being a lawyer. On this basis they have blocked the entrance of blind students into law school. Some have said that even if a blind person could succeed in law school, he couldn't be a success as a practicing lawyer. Any student, regardless of his potential for success in a profession after graduation, may matriculate at the institution as long as he meets the admission requirements. Why does the department propose to require that handicapped students be able to demonstrate that they will be successful in their chosen professions before they can be admitted to an institution to prepare themselves? Clearly the department must change its attitudes about the handicapped!

"Similar comments could be made about detailed sections of the draft with respect to educational programs and activities, but the point is that the department must carefully examine its position that the handicapped are automatically to be considered different from others. The presumption, again, should be that they are not. When the department proposes the regulations, we will present a detailed analysis of each point, but we have set forth evidence here to show that a careful rethinking of philosophy is in order before such regulations are proposed."

Thus we were profoundly concerned with the direction which enforcement of section 504 was taking. In fact, many of us were beginning to wish that the Congress had not enacted it in the first place. Certainly we felt that we could probably get more justice in the courts (witness the Gurmankin case) than we could at the Department of HEW. Thus, in a closing statement responding to the department's May 17 notice, we again quoted Hazel tenBroek:

"These regulations are appalling. The exhibition of ignorance of basic statutory construction, the rights of individuals, and the relationships between governmental entities is breathtaking. One issue that is going to be a problem to us and which must be dealt with soon is that of classification. As indicated in a footnote in the Gurmankin case, due process may be accorded the handicapped but watch out for equal protection. The indication that a handicapping condition produces a suspect class is [what we must deal with].

"[The preamble to the draft regulation states:] 'This section breaks new legislative ground in that it is the first major statutory civil rights enactment that protects the rights of handicapped persons.'

"It is a sad commentary on the attitudes of the general public that must so admit that a class of citizens has not been accorded those rights thought and declared to be inalienable. It is, then, true that a citizen—who has been exercising all the rights connected therewith—upon becoming disabled thereupon surrenders his right to life, liberty, and the pursuit of happiness; or, being born in this country of citizens but arriving with a physical handicap bears the additional burden of being adjudged a 'native American alien.'

"The declaration of equality before the law having been made (if indeed it has been), must the disabled then sue, each class separately, to obtain the exercise of those rights or the protection of that law? . . .

"The regulations need not have been so extensive if the handicapped had been added to the Civil Rights Act of 1964, but that was a solution too simple for those anxious to build empires.

"I return to my current favorite theme—the country of the disabled. This seems to be another plank in the fence around it. How do we get the disabled back under the protection of the U.S. Constitution?"

Federationists who attended the 1976 NFB Convention in Los Angeles will recall the appearance of Martin Gerry, at that time the director of HEW's Office for Civil Rights. In his presentation Mr. Gerry responded extensively to our June 14 letter and promised to amend substantially the 504 regulations which were scheduled to be published as proposed rules later in July. Specifically on the matter of separate and different treatment, Mr. Gerry stated:

"There is no question that the range of disabilities covered by the definition of handicapped person within section 504 is very broad; and those disabilities certainly impact on people in many different ways.... In many cases the impact of those disabilities would not in any way require anything other than a fair equal opportunity to be presented in terms of identical treatment or identical services by a provider. I think the comments in the June 14 letter very appropriately made this point and I think the emphasis in the draft was ill-placed. That emphasis will be changed [and] will reflect much more the operating assumption that there should be substantial evidence presented if [it is claimed that] a particular physical characteristic prevents the achievement of equality through identical treatment—this assumption being the reverse of the current draft. The current draft pretty much starts off on the assumption that in many instances there may be the need for different treatment in order to create an equality in terms of the effectiveness of services. Certainly that is true in certain cases, but I think it's fair to say—and I think it was an important insight reflected by the comment—that the thrust, the direction, the compelling force of the regulations should not be in that direction. And I think that in redrafting the proposed regulations, I can assure that those comments will be taken very seriously. I think the concept . . . with respect to the burden of responsibility being on a recipient to justify any different treatment, and that there should be a basic assumption that there will be identical treatment is a fair one, and it is a very important one."

On July 16, 1976, the Department of HEW published proposed rules implementing section 504. Although our objection to separate services and different treatment was duly noted in the preamble, the department failed to change its attitude about the handicapped, Mr. Gerry's comments notwithstanding. Actually, the whole issue seemed to be regarded more as a matter of emphasis than of substance.

HEW's failure to recognize that its negative attitude would impose additional discriminatory barriers on the handicapped had to be challenged. So, in a letter dated September 9, 1976, we wrote:

"For some reason the department seems obsessed with the notion that section 504 somehow breaks 'new legislative ground.' We do not agree. Civil rights are civil rights. The fact that the Congress has now given the department specific legislative authority to apply civil rights concepts to the handicapped does not mean that the department has been given the lattitude to approve the operation of federally assisted programs in a manner which discriminates. In our judgment, the draft regulations and the proposed regulations would permit more discrimination than now exists by giving broad approval to the notion of 'different treatment' for the the handicapped. Since the department proposes to adopt a broad definition of handicap, it follows that the vast majority of persons covered are individuals who

can (if given the opportunity) participate on terms of equality and accommodate to 'identical treatment.'

"For example, blind persons who attend the colleges and universities need not have special consideration for admissions, special course requirements, special living arrangements, special provisions for study, nor special programs imposed on them purportedly to assist them to adjust to the 'handicap' of blindness and to render them capable of independent mobility about the campus. In fact, all such provisions and programs are not only unnecessary, they are completely undesirable in the university setting. Such special arrangements, provisions, and programs have also been shown to discriminate against blind students. We reject them, and we wish to be treated as all other students on the campus. There is nothing inherent in blindness or blind people which would render different treatment necessary or desirable, and so it is with most persons covered under the protection of section 504. . . . Where different treatment is deemed appropriate, it must be fully justified. This justification must be in writing. The rules of the game should not be made up as we go along."

Throughout the rest of this letter, we called upon HEW to mend its ways and enforce a true civil rights program which would emphasize equality and opportunity for all, regardless of handicap or the lack thereof.

On September 14, 1976, the comment period on the proposed regulations ended, and a period of waiting began. Rumors concerning their status and possible issuance as final rules were everywhere. In January 1977, amid the speculation, a new draft (somewhat improved but still containing inaccurate presumptions and negative attitudes) was developed and transmitted to then HEW Secretary F. David Mathews for his signature.

As January 20 approached (the date of the change in Administrations), some groups representing certain segments of the disabled began to mount pressure to get the regulations signed. History will probably show that it is fortunate for all of us that they were unsuccessful. Secretary Mathews first considered sending the regulations back to the Office for Civil Rights for redrafting, then he considered sending them to the Congress for comment, and finally he left them lying on his desk so that the new HEW Secretary, Joseph A. Califano, Jr., could do what he wanted.

On February 17, Secretary Califano announced his plans. Wisely, he expressed concern that the full implications of the regulations be explored and reviewed by the new Administration. He appointed a task force chaired jointly by F. Peter Libassi, his special consultant on civil rights (and the former director of the Office for Civil Rights in the Johnson Administration), and Arabella Martinez, Assistant Secretary for Human Development in HEW. Originally the task force was to complete its work in approximately 30 days and report its findings and recommendations to Secretary Califano.

As many may have noted in the media, the Secretary's action drew fire from some persons and organizations representing the disabled. Apparently there was the feeling that further delay was occurring because of pressure to weaken substantially the regulations which had been submitted to Secretary Mathews. The cry arose that Secretary Califano was "selling out" President Carter's commitment to the handicapped, and there were calls from a few of the disabled to "sign or resign."

Throughout all of these demonstrations and protests (and they included picketing President Carter's Sunday School class), the force and weight of the NFB was notably absent. In Washington, D.C., (as well as in other parts of the country) our leaders were approached and our support solicited. We declined. The battle was not ours to fight at that time in that way. We have always tried to be peaceful and reasonable people; that is, as long as those we are dealing with are peaceful, reasonable, and responsive in return.

Certainly in this instance the approach taken by the new Administration seemed reasonable. There appeared to be a genuine

desire to understand why we felt there might be more danger in issuing a set of regulations based on false presumptions than in withholding them pending revision. Especially Mr. Libassi (now the general counsel for the entire Department of HEW) seemed to understand. Thus, while others went before the cameras and did what they could to stimulate public outrage, we worked closely and quietly with the Secretary's task force, attending meetings, making our philosophy known, and arguing our case.

On Thursday, April 28, Secretary Califano signed the 504 regulations. They were published in the *Federal Register* of May 4, and are now in effect. Of course, as mentioned earlier, this is only the first set of regulations to be published. Later, using these regulations as a model, HEW will promulgate standards for the regulations to be issued by all other federal agencies which provide federal financial assistance. Thus there is probably a long struggle ahead, and we will have to remain vigilent.

Although from certain vantage points the HEW regulations may have some weaknesses, early analysis indicates that we were at least moderately successful in changing the predominant attitude about the blind and handicapped. Of course, as with the affirmative action in employment program administered by the Department of Labor, much of the impact of section 504 will be determined by the extent to which we take advantage of the complaint process.

Overall, the final regulations demonstrate cognizance of the fact that each type of disability imposes unique limitations and, therefore, that removing discriminatory barriers cannot be done by an approach which blanketly accepts the false principle that handicapped people are inherently less able and less resourceful than the non-handicapped. Whereas the proposed regulations showed a tendency to encourage the creation of special approaches to serve the handicapped (a kind of "separate but comparable" approach), the final regulations clearly state that separate treatment is not to be the rule of thumb.

For example, in section 84.4—"Discrimination prohibited"—we find the following new language: "Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different."

In commenting on this statement, the regulation drafters said: "It must be emphasized . . . that the provision of unnecessarily separate or different services is discriminatory. The addition . . . of the phrase 'in the most integrated setting appropriate to the person's needs' is intended to reinforce this general concept. A new paragraph has also been added to section 84.4, requiring recipients to give qualified handicapped persons the option of participating in regular programs despite the existence of permissively separate or different programs. The requirement has been reiterated in sections 84.38 and 84.47 in connection with physical education and athletics programs."

While the complexity and length of the 504 regulations do not permit any further analysis here, it can be seen that there is great potential for true equality, given effective enforcement mechanisms and—where we find discrimination—our willingness to file complaints. Acceptance of the standard of "identical treatment" and "participation in regular programs" constitutes another victory for the organized blind. It erases (hopefully once and for all) the potential harm which might otherwise have grown out of the very existence of the 504 regulations.

In signing the new regulations, Secretary Califano set a theme which we hope will be carried out as the federal government moves to enforce the law. He said: "Section 504 and this regulation constitute a striking recognition of the civil rights of America's handicapped citizens, just as title VI of the Civil Rights Act and title IX of the Education Amendments of 1972, and their companion regulations, are critical elements in the structure of law protecting the civil

rights of racial minorities and women. In section 504, the Congress enacted a charter of equality to help end the shameful national neglect of handicapped individuals and to translate many of their legitimate needs into legal rights. □

THE LIGHT AT THE END OF THE TUNNEL: ANOTHER "INVITATION" FROM NAC

NATIONAL ACCREDITATION COUNCIL
FOR AGENCIES SERVING THE BLIND
AND VISUALLY HANDICAPPED,
New York, New York, April 8, 1977.

DR. KENNETH JERNIGAN,
President, National Federation of the Blind,
Des Moines, Iowa.

DEAR DR. JERNIGAN: As chairman of NAC's nominations committee I once again have the task of inviting the National Federation of the Blind to suggest board of director candidates for our consideration.

NFB has been regularly invited to participate in this process by suggesting names of qualified persons. You have regularly refused these invitations, instead demanding the "right" to appoint ten persons to our board.

In response to our first invitation, you wrote as follows to the former chairman of the nominations committee on December 6, 1974: "NAC has never, all statements to the contrary notwithstanding, shown any real interest in having consumer representation on its board or meaningful consumer input at all. It shows none now. Rather, it has maneuvered and gestured and pretended and postured, and it continues to maneuver and gesture and pretend and posture."

You were wrong then, and the record shows it. For example, seven of the 23 directors elected for terms running into 1977 or 1978 are persons who were suggested by the American Council of the Blind or the Blinded Veterans Association. In addition, three of the 12 directors elected last November for terms running into 1979 were ACB candidates and two were BVA candidates.

The involvement of persons suggested by these national consumer groups has enriched our standard-setting, accrediting programs and strengthened our cooperative relations with these organizations. Your refusal, on the other hand, has deprived able NFB members of a comparable opportunity for significant involvement in a national movement to stimulate quality services that affect their lives.

We hope that NFB this year will decide to participate in our nominations process by letting our committee have the names of your suggested candidates by August 1st, after your annual convention in July. It would be a significant first step toward working together to improve services for all blind and visually handicapped Americans.

Sincerely,

ARMAND P. LECO,
Chairman, Nominations Committee.

NATIONAL FEDERATION OF THE BLIND,
Des Moines, Iowa, April 13, 1977.

ARMAND P. LECO,
Chairman, Nominations Committee,
National Accreditation Council,
New York, New York.

DEAR MR. LECO: Certain exchanges between NAC and the organized blind of this country have almost become an annual ritual. Your letter of April 8, 1977, is one of these. You say that the reason we have not participated in NAC's nomination process in the past is because we have demanded the "right" to appoint ten members to NAC's board and that NAC has not acceded to this demand. The truth is otherwise, and I think you know it. However, since your letter was presumably written to establish a record and since mine is for the same purpose, I shall fulfill my part of the ritual.

The much-discussed "ten NFB members on NAC's board" was not a "demand" of

NFB. Let me remind you: NAC appointed a committee of four of its own board members to meet with representatives of the Federation to try to work out a solution to NAC's unrepresentative and undemocratic operation. That committee met in Des Moines. I was there. The NAC and NFB representatives worked out a written agreement. According to the terms of that agreement the NFB would nominate ten members, and NAC would appoint those members to its board. The American Council of the Blind and the Blinded Veterans Association were also to have the right to nominate agreed-upon numbers of members. Mr. Rives (the current president of NAC) was one of the NAC representatives. He said in the presence of witnesses that he thought the agreement was eminently fair and reasonable and that if the NAC Board did not accept it, he would disassociate himself from NAC.

The NAC power structure did not accept the agreement. Mr. Rives did not keep his word. This is quite a different picture than the one painted in your letter. It is the truth, and the documentation exists to prove that it is the truth. Why, then, did you write me your letter with its false implications?

Further, since we are building a record, let me recount other truths to you: NAC's history is long; it's undemocratic; and it's shabby. In 1966 I was asked to join the NAC Board, and even though I knew of the disreputable methods employed in creating NAC, I accepted the invitation. I did so hoping to help make of NAC a useful and honorable instrument in the service of blind people. At that time all of NAC's meetings were closed. Further, I was told that it would not be appropriate for me to discuss at NAC Board meetings my concerns regarding the basic constitution and purpose of NAC. It was made clear that I was on the board for purposes of tokenism and exploitation.

Late in 1970 a small group of blind persons went in an orderly manner to the New York City NAC Board meeting and requested permission to sit as silent observers to hear the proceedings. Their request was denied, and a NAC staff member was placed outside of the closed door to watch them. This continued throughout the day.

I then offered a motion that two of the group be permitted to enter the room as silent observers with the understanding that they would pledge not to say a single word but merely listen. This motion was overwhelmingly defeated.

This sort of conduct on the part of NAC inevitably brought reaction. Over the years as blind persons increasingly began to resent NAC's high-handed behavior and detrimental effect upon their lives, there were demonstrations and protests. As the blind stimulated massive pressure from Congress and the public, NAC reluctantly opened its meetings to observers, but this was a matter of show, not reality. As you well know, it still is. When the board meetings were opened, more and more business was transacted by NAC's executive committee, which is still closed.

From the very beginning NAC has resented any attempts on the part of the consumer to have any voice in its affairs or operation. It has done all that it could to discredit the organized blind movement and its leaders. Particularly, NAC has carried on a campaign of slander and vilification against me personally. Your relatively civil letter is in sharp contrast with NAC's general posture toward me.

At my last NAC Board meeting in 1971 I was publicly insulted and vilified by one of NAC's board members and very nearly attacked physically.

NAC keeps alleging that only the Federation (and, particularly, the Federation's leaders) oppose it. The truth is that many of the agencies doing work with the blind in this country oppose NAC and that most of the blind oppose it. The reason is not hard to find. NAC does harm to blind people and tends to reduce the quality and lower the standards of agencies serving the blind. This is so because NAC accredits many agencies that are providing substandard service. By telling the public that these

programs are providing quality service, NAC gives them respectability and tends to prevent reform or upgrading of standards.

Let me be clearly understood: I am not saying that each and every agency accredited by NAC is substandard, but I am saying that many of them are and that the quality of service provided by them has nothing to do with whether that agency can receive NAC accreditation. This sort of conduct is unethical, and it hurts blind persons. It tends to lower standards, the exact opposite of what NAC claims.

When I consider those agencies that are accredited by NAC as opposed to those that have not sought NAC accreditation, I would be ashamed to be in the company of the former and would certainly hesitate to associate with one that was. I think of no instance in which NAC accreditation has improved the quality of service to the blind. I can think of a number of instances in which NAC accreditation has been used to help bail out substandard agencies, assisting them to fend off needed reform.

All of this is thoroughly documented. Both of us know it. Why, then, did you write me? Apparently NAC still hopes that it can somehow change the record and undo the past, but it cannot. NAC is so controversial, its name is so sullied, its unethical and political behavior so exposed that it can never be a constructive force in the field of work with the blind.

Even the ritual of such letters as these grows tiresome and redundant. It has all been said. It has all been proved.

I leave you with this to ponder: There is something called "the point of no return." It's simply this: The light at the end of the tunnel could turn out to be the headlight of an oncoming train.

Very truly yours,

KENNETH JERNIGAN,
President, National Federation of the Blind.
□

NEW HOPE FOR JUSTICE IN THE BOHRER CASE

by RAMONA WALHOF

Mr. and Mrs. James T. Bohrer are residents of Wichita, Kansas. They have raised four children of their own, and after these children were grown, applied for and received a license to provide foster care to young children in their home. This license was issued jointly by the Kansas State Department of Social and Rehabilitation Services (SRS) and the Kansas Department of Health. Over a period of several years, 12 foster children were placed in the Bohrer home and the relationship between the Bohrers and the Department of SRS was a happy one. The fact that Mrs. Bohrer is legally blind because of albinism was never a problem or even a factor in the many contacts between SRS and these foster parents. (Maxine Bohrer is the president of the Wichita Chapter of the NFB.)

The thirteenth child placed by SRS with the Bohrers was emotionally disturbed. He refused to eat and drink. Therefore the Bohrer family doctor advised Mrs. Bohrer to force liquids into the child by mouth. This she did, as any parent would, to try to avoid fever and dehydration. In doing so, she scratched his face—something which might easily occur as the child struggled. The child also bruised his back by rocking against the back of his potty chair.

When the child's fever went so high that it concerned Mrs. Bohrer, she took him to a hospital. The doctor there filled out a form indicating that this was a case of possible child abuse that should be further investigated. He made no accusation, however. It happened that the child's natural father was a policeman and saw his child's name as a possible victim of child abuse. Naturally, he was concerned. The father went to SRS to ask for an investigation. No investigation was made. A social worker from

SRS went to the Bohrer home and took the child away. Later their license to provide foster care was also revoked. No one at SRS seemed to care or remember that 12 children had previously been cared for by the Bohrers in their home with nothing but positive response from all.

Mr. and Mrs. Bohrer appealed the decision to revoke their license at an administrative hearing before the Departments of SRS and Health. They lost the appeal. It was first revealed at this hearing that Mrs. Bohrer's blindness was the real issue.

It was argued by SRS and the Health Department that a blind person could not provide adequate foster care to young children. The Bohrer's attorney, Mr. Bill Rich, was not expecting this line of argument, and the Bohrers were not prepared to present testimony to prove that Mrs. Bohrer's blindness was not a factor in her ability to care for young children. They were not aware that blindness had been the reason for removal of the child. Thus, since no evidence could be presented at the administrative hearing to demonstrate that the abilities of the blind—and in particular of Mrs. Bohrer—are indeed adequate for the performance of the responsibilities of caring for young children, and since the arguments of the SRS and Department of Health attorneys were largely based on their belief that a blind person could not provide such care, the hearing was not a fair one.

It was at this time that the Bohrers contacted Dick Edlund for help from the NFB. We appealed the case again, and it was next heard by the District Court of Sedgwick County, Kansas, the 18th Judicial District, on January 18, 1977. The presiding judge was Hal Malone.

Mr. Edlund and Mrs. Ramona Walhof traveled to Wichita to testify at the hearing as expert witnesses on behalf of the Bohrers. But the judge had to rule that their testimony was not admissible at this late stage. Their testimony was proffered by Bill Rich (in other words, the attorney told the judge what they would have said had they been permitted to testify). Judge Malone obviously understood the situation. The Bohrers needed to have testimony about blindness introduced into the record to counter the arguments made by SRS and Health, but there was no such evidence in the record at this time. The Bohrers had arranged for expert witnesses to come to Wichita to provide this evidence, and although their evidence was not admissible at this later point, the judge understood that it should have been introduced at the earlier administrative hearing. Yet since prior to the administrative hearing, the Bohrers were not told that blindness was a problem, they could not have been expected to introduce this evidence at that time. That the judge understood this is shown by his decision. He ordered a new administrative hearing. We commend Judge Malone for his decision in this case. Without it justice would have been impossible.

Everyone involved now knows that the issue is blindness. There will be plenty of evidence at the new administrative hearing to show that Mrs. Bohrer's blindness does not prevent her from giving excellent care to young children in her home. This is truly a landmark decision in the application of laws affecting the blind, and we will work for as good a decision at the next administrative hearing.

The judge ordered the new hearing on a number of grounds. Some of these were technical violations of procedure, but the important one to us concerns the discriminatory and unsupported beliefs about blindness which were the basis of the original decision. The judge's conclusions of law on this point are as follows:

"(2) The term 'unlawful discriminatory practice' means any discrimination against persons in the full and equal use and enjoyment of the services, facilities, privileges, and advantages of any institution, department, or agency of the state of Kansas or any political subdivision or municipality there. Licensing of foster parents by SRS and Health constitutes a service or privilege as contemplated by said act.

"(3) Discrimination against the physically

handicapped occurs when there is a denial of said service or privilege because of such physical handicap without a showing of a substantial relationship between the handicap and performance contemplated by the service or privilege in question.

"(4) The burden of proof in showing that such a relationship exists is upon the agency which has made the discriminatory classification.

"(5) SRS based its decision upon the fact that Mrs. Bohrer is legally blind and, therefore, discriminated on the basis of said physical handicap.

"(6) The Department of Social and Rehabilitation Services failed to show that said discrimination was justified due to a substantial relationship between 'legal blindness' and the ability to provide foster care services.

"(7) The standard established by SRS requiring that the applicant prove an ability to compensate for hypothetical problems in the absence of evidence that such problems actually exist constitutes a violation of the plaintiffs' right to respond to the charges against them.

"(8) The notification that the plaintiffs were required to prove an ability to compensate for said alleged problems, which appeared for the first time in the Appeal Committee's decision, constitutes a violation of the plaintiffs' right to respond to the charges against them."

"(11) The inclusion in the record of documents prepared by the agency of which plaintiffs were not given advance notice constitutes a violation of the Kansas Administrative Regulations.

"(12) The agency decisions are arbitrary and unreasonable as a matter of law."

We of the National Federation of the Blind will not tolerate decisions such as the one reached at the original administrative hearing in the Bohrer case. The implications of that decision would have been seriously harmful in their application to all of the blind of Kansas and of the entire nation.

We will present testimony at the new administrative hearing when it is scheduled; and we believe that justice will occur. If necessary we will again appeal the case. However, the argument advanced by the attorneys for SRS and the Department of Health will not stand up against the evidence we have of the competence of the blind.

This is where we are in the Bohrer case. We can never go back. We will march on and we will win this case. □

AFL-CIO LAUNCHES SHELTERED SHOP UNION-ORGANIZING CAMPAIGN, WHILE THE AFB-NAC-ACB COMBINE ARGUES EQUALITY "CAN ONLY HURT" BLIND PEOPLE

by JAMES OMVIG

Monitor readers will recall that, solely through the efforts of the National Federation of the Blind, National Labor Relations Board (NLRB) policy has been changed to permit self-organization on the part of sheltered shop employees in this country (see the *Braille Monitor* for October 1976).

This means that, for the first time in our history, sheltered shop employees have the federally protected right, if they choose to exercise it, to bargain with their employers over wages, hours, and working conditions. It is well known and undisputed, of course, that wages, hours, and working conditions for sheltered shop employees have traditionally been scandalously poor and, therefore, that employees should work toward self-improvement.

Recently, an exciting event has occurred. Mr. Eugene Flack, business agent and organizer for the Toy and Doll Workers Union, AFL-CIO, has informed me that he has AFL-CIO authorization to work full-time to organize sheltered shops in this country,

so that shop employees may have the opportunity to live and work with dignity and self-respect. He indicates that, as scheduling permits, he will travel any place in this country to promote self-organization.

You will recall that in my October 25, 1976, letter to Mr. Fred McDonald, executive director of the Chicago Lighthouse for the Blind, I wrote as follows:

"One might speculate as to why the employees of the Chicago Lighthouse did not vote to have union representation at the election in July, but this is not an unusual pattern in industries which are only beginning to have the right to organize. The road from fear to confidence is often difficult and long. I believe, however, that the time is not far off when all (or nearly all) of the sheltered shop employees in this country will take advantage of their newly acquired right to organize. I think this would be a good thing, and I will do all I can to help them. If you do not like my sentiment, I invite you to take whatever action you think proper to counter it."

By this article, I am keeping my promise. It is now the federally protected right of sheltered shop employees to decide whether or not they wish union representation, and to engage in collective bargaining. The National Federation of the Blind certainly would not and could not insist that all workers join together for concerted action to improve wages and working conditions. However, we certainly believe that every sheltered shop employee has the right to know about his or her newly acquired federal protection and what collective action can mean in terms of improvement of job benefits.

Accordingly, if you wish direct information about the AFL-CIO's new organizing campaign, contact: Eugene Flack, business agent and organizer, Toy and Doll Workers Union, AFL-CIO, 116 Fifth Street, Savanna, Illinois 61074, telephone (815) 273-3537.

You will also remember that the Communications Workers of America had previously indicated that that union would be willing to assist in organizational activity if asked to do so. It is my understanding that this offer still stands.

The Chicago Lighthouse story continues to unravel. As you will recall, the Lighthouse fired one leading organizer before the NLRB election was ever held. Recently, the Lighthouse has made much of the fact that only 42 percent of the employees voted for collective bargaining, and 58 percent voted against. In this connection, it is interesting to note that, prior to the initial firing, more than 80 percent of the Lighthouse's production and maintenance employees—the term employee as used here includes persons called "clients" by the Lighthouse—had authorized the Communications Workers of America to represent them. On Friday, November 12, 1976, the Lighthouse fired three more union leaders, along with several other employees. The National Federation of the Blind filed unfair labor practice charges against the Lighthouse, alleging that these firings were motivated by unlawful purposes. The Regional Director of the NLRB dismissed our charge, and we appealed his decision to Washington, D.C. The verdict is now in, and the firings were upheld as being permissible.

In a letter to President Jernigan dated April 25, 1977, Mr. Carl S. Silverman, a labor attorney who worked on the Lighthouse case, stated in part:

"As is evident from the enclosure, the NLRB's General Counsel has denied our appeal in the above-captioned matter. I find the General Counsel's Office of Appeals decision most regrettable.

"After careful investigation and preparation of the above-captioned case for the Chicago Region and the Office of Appeals in Washington, D.C., and developing evidence upon which the NLRB could have gone forward, I must conclude that the agency did not feel it was worth the commitment in time and money to advance the case any further."

So, where do we go from here? We can only go forward! We have changed national policy, and unions have become aware of the plight of those who are employed at

substandard wages and under substandard working conditions in sheltered shops; and unions are more than aware—they are willing to work to represent employees who freely exercise the right to be represented. We will continue to inform employees of their newly acquired rights.

Is our action constructive? It all depends upon your point of view. In our opinion, sheltered shop employees should have the same rights that competitive employees now enjoy in this country: They should have the right to bargain over wages, hours, and working conditions. They should have the right to voice grievances without fear of reprisal. They should be paid decent wages and they should have working conditions which provide not only for cleanliness and safety, but also for human dignity and self-respect. In other words, we believe that the time has come when sheltered shop employees should not simply be required to accept what management is willing to hand out.

On the other hand, our action would probably not be regarded as constructive by Mr. Fred McDonald, Chicago Lighthouse director. He is quoted in the Spring 1977 issue of *Dialogue* magazine as having said of us:

"I want to go on record as saying the group is irresponsible and almost fanatical in a declared goal of controlling all blind services in this country or destroying those services.

"They have attacked all 67 accredited agencies for the blind in the United States—agencies accredited by the National Accreditation Council, which is the only agency for accreditation in America. They have announced that they are going to use Chicago as a springboard to destroy sheltered workshops in this country."

I would suspect that after a reading of these quotes there will be some difference of opinion as to who is fanatical.

When we speak of unionism, we speak, of course, of independent, undominated unions. "Company unions" are something else again. They can be used for many and varied purposes. In the present instance, the American Foundation for the Blind-National Accreditation Council-American Council of the Blind combine would take the position that our action is destructive, that it is destructive for employees to have the right to organize and to have some say in the kinds of wages and working conditions under which they must exist. They say our entire effort is destructive, but then, let them speak for themselves. In the March 1977 *Braille Forum* (the ACB magazine), an article entitled "Open Letter to the National Federation of the Blind—'The Blind Speaking For Themselves,'" we read the following:

"Your irresponsible actions in attacking every major national agency serving the blind in this country, yet refusing to help improve programs and services, can only hurt all blind men, women, and children—indeed, all handicapped people.

"In Illinois, you have singled out the Chicago Lighthouse for the Blind as your target, yet offer no constructive suggestions or ideas on how service and programs can be improved."

One can only feel pity for those who have been so hoodwinked and flimflammed.

We all know that AFB funds and controls NAC. We always knew that ACB was AFB's company union, but we did not know until recently that AFB was funding ACB. As stated in the *Braille Forum* for January 1977, "The [AFB] grant was given to the *Braille Forum* as part of the Foundation's outreach effort designed to reach more blind citizens with information." Is it any wonder that the company union would decide that our actions are destructive? Or that they would, robot-like, print an open letter signed by "the Blind Employees and Blind Friends of the Lighthouse"? This name, or variants of it printed at the bottom of rabid attacks on the NFB, we have come to recognize as the pseudonym of the Chicago Lighthouse staff.

As we have indicated, we believe that our course of action in securing equality for sheltered shop employees is perfectly proper,

and we intend to carry on our efforts. It is equally clear that the AFB-NAC-ACB combine intends to continue to fight and to try to keep the blind down and out. To give you some idea of the pressures we will face, examine carefully the following anti-union document which is now being circulated to sheltered shops around the country. While we are not certain of its origin, its language and other characteristics would suggest to some that it came from the Chicago Lighthouse for the Blind. At the least, it is suspiciously suspicious; in fact, it is suspicious enough to create the suspicion that it was a brainchild of that institution.

As you read this document, consider what it means and what we might do to counter it as we assist blind shopworkers.

"NEW NLRB POLICY
THREATENS REHABILITATION

"A situation exists in Washington, D.C., that seriously threatens the existence of the sheltered workshop as we know it today in the United States.

"On June 24, 1976, [sic] the National Labor Relations Board changed its policy of more than 30 years and declared that no longer would charitable institutions (including sheltered workshops) be exempt from NLRB regulations.

"One of the first workshops in the country to feel the effects of this new policy was the Chicago Lighthouse for the Blind which on June 28, 1976, received an order from NLRB to hold an election within its workshop to determine whether or not the employees chose to have the Communications Workers of America represent them in collective bargaining.

"Significantly, the order named the bargaining unit within the workshop to include all production and maintenance employees *and clients.*

"The Chicago workshop operates under a special certificate from the U.S. Department of Labor and has voluntarily raised its minimum wage from the required $1.15 per hour to $2.00 per hour, plus production bonuses.

"Placement within the community in competitive industry at competitive wages has been the number one vocational training goal at the Chicago Lighthouse and for the past two years it has finished first or second in the country among facilities for the blind in competitive placements.

"Those blind men and women unable to be placed, or failing to meet industry production requirements when placed, continued on extended employment within the workshop. Approximately half of the extended workers limited their earnings through hours worked to comply with Social Security limitations on earnings ($220 per month).

"Push for a union within the Chicago Lighthouse came from the National Federation of the Blind—an extremely aggressive consumer organization that has attacked just about every public and private agency offering blind services.

"NFB members within the workshop hailed the change of policy by the NLRB Board in Washington as a personal victory and began telling shopworkers that they would get $4 per hour and all benefits once the union got in.

"Lighthouse officials pointed to the fact that the workshop had suffered a deficit of $175,000 last year which was made up by contributions from individuals. It was also pointed out that the workshop is made up mainly of multiply handicapped men and women who last year produced at 61% of standard, according to professional engineering studies based on MTM studies.

"All work for the sheltered workshop comes from subcontracts won through competitive bidding with other workshops and private business. Because of low productivity, the Chicago workshop bids have to reflect higher labor costs per unit produced than would a non-handicapped shop.

"Concern has been expressed for contracts already in the workshop that might be pulled out by industry because of any higher costs [that] would reflect the talked-about increase in wages and benefits for

the workers.

"Chicago Lighthouse says the workshop was designed as an alternative for those blind men and women who could not get or hold jobs in the community.

"NFB and the union says that doesn't matter. They should be treated just like any other workers in private industry and therefore are entitled to all the benefits such workers receive.

"The Lighthouse then asks, if we must extend the same benefits to these workers, isn't it then logical that we must extend the same minimum requirements for employment and production as required by private industry? And if we do this is it possible to continue to operate a sheltered workshop?

"Rehabilitation counselors are upset by the ruling of NLRB for other reasons. They wonder how it would be possible to maintain the traditional counselor-client relationship in those long-term cases now represented among the bulk of people in the workshop, with a third party (union) standing in between.

"What does all of this mean to you as a workshop director not facing this problem that now faces the Chicago Lighthouse?

"It means that because of the new NLRB ruling your workshop could be next on the list. National Federation of the Blind has already announced it plans to open union campaigns in all sheltered workshops for the blind in this country. It doesn't take long for this kind of a campaign to spread to non-blind workshops.

"It means that there are probably some things you should do now. Once a union solicitation starts your actions are strongly limited by law:

"(1) Eliminate as much as possible possible grievances within your workshop. Do you have a proper grievance structure?

"(2) Work closely with an employee advisory group from the workshop and listen carefully to what they say.

"(3) Make sure your supervisory personnel document in the individuals personnel file any incidents requiring warnings, reprimand, etc., of personnel—this is critical.

"(4) Establish vehicles for good communications with all personnel such as a frequent newsletter, p.a. announcements, group meetings, etc.

"(5) If you have long-range plans for improvements in any phase of the workshop, make them public now. You may not be able to do this later under the NLRB edict of 'no promises.'

"(6) Get advice from a good *labor* lawyer. Do not under any circumstances look to a general counsel for good advice in this field. It is highly specialized and the good lawyers know that and defer to the specialist. It is very easy to make an honest but fatal mistake in your negotiations with union organizers.

"(7) Be prepared for 'skeletons' to be dragged out of the back closet. There are no secrets in such a campaign.

"(8) Prepare a clear statement of purpose for your workshop that clearly explains why it is not like an ordinary business. There are many who do not understand all the implications of treating a sheltered workshop completely like a competitive business. I am drawing a sharp distinction between a sheltered workshop, serving those who are not employable, and a so-called production workshop that does not have a placement program but in effect employs workers who very well could hold down regular jobs in the community.

"(9) Brief your board and staff well on the possible implications of this new development for your workshop. You might be surprised to discover that many who have not thought it out fully believe a union would be a good 'learning experience' within the workshop.

"(10) Develop a plan of action as to what you would do if such an attempt started in your workshop. Again, I repeat, be very careful in what you say or do that is not based on advice from a labor attorney. For example, NLRB considers it an unfair labor practice if you say to organizers

that such a union would put your shop out of business. NLRB could then order a union in without even an election and force bargaining.

"Union officials have openly stated that during August ('76) active campaigns were being conducted in many non-profit agencies leading up to elections.

"Management of these agencies could be completely unaware that their agency is one of these in which organizational work is now being done. The first steps in any such campaign are quiet, behind-the-scenes conversations at the organizer-to-worker level and then worker-to-worker getting signatures on union cards seeking representation by that union.

"When the union acquires the necessary 30% of the proposed unit on cards stating they want that union to represent them, no longer is the operation under wraps. It all comes out in the open on the agency director's desk in the form of a demand by the union for the right to represent the workers in bargaining.

"No longer can the agency look to the security of NLRB's policy exempting non-profit institutions such as sheltered workshops. That agency is now faced with an election and probably within 30 days.

"Once the NLRB has ordered the election, management (the agency) is under considerable restraint as to what it can say, or do. Here's where the constant advice of a good labor attorney is critical.

"Dealing with unions and possible unions has long been a way of life for the manager in private industry. Suddenly it is facing executive directors of rehabilitation centers, workshops, daycare centers, etc.

"The NLRB change of policy has suddenly altered the basic responsibilities facing the executive director of a non-profit agency.

"It could indeed alter the complete concept of rehabilitation itself." □

PROGRESS IN THE CLASSROOM: OVERCOMING DISCRIMINATION IN THE TEACHING PROFESSION

"The blind . . . are conspicuously absent from the teaching profession. Some few have from time to time held teaching positions in colleges and universities and others have been recently engaged to conduct Braille classes in the public schools; but in areas of regular elementary and secondary teaching none has been employed."

So wrote Kenneth Jernigan 22 years ago of the situation in California in his report as chairman of that state affiliate's committee on teacher education. In the process he sounded the call to break down one of the highest barriers barring the blind from full participation in society, not only in California but across America.

Those barriers are now falling. They are falling because of constant efforts by members of the NFB to change public attitudes, to inform public officials, and to carry their case to school boards and administrators. They are falling because the growth and success of the Federation has given blind men and women the confidence to demand what is rightfully theirs. And they are falling because Federationists are willing to back up their words with deeds, because they are willing to follow up their demands with administrative complaints, lawsuits, and appeals to the highest courts in the land.

In the past 22 years those efforts have begun to pay off. From at best a handful of teachers a generation ago, there are today more than 400 nationwide. The pattern of employment, however, is uneven. In some states, where NFB efforts to change public and school system attitudes have been strongest, the numbers are becoming substantial. In other states the doors to the classroom remain barred to even the most qualified blind applicants.

Increased efforts at public persuasion

may open a few more doors. But if all the barriers are to be overcome, legal action is absolutely necessary.

For almost a decade the Federation has been carrying on a battle to break those barriers in the courts. It has not been easy. The NFB has had to carry appeal after appeal. Even then the victories have not always been as complete as desired. Early cases turned on legal technicalities even though the real issue was clearly discrimination based on blindness. Others were settled before precedent-setting judgments could be rendered. But recently the courts have begun to strike at the root of the problem and to declare discrimination against the blind a violation of the law.

Monitor readers will recall the long and successful struggles which began in the late 1960's to win back the jobs and to win justice for Pauline Fucinari and Evelyn Weckerly in the schools of Michigan. Both of these blind teachers were fired just before the completion of their two-year probationary periods. In both cases there had been little criticism of their performance as teachers until the ax fell, immediately before their jobs would have become tenured. Both dismissals, however, were technically deficient for failing to give the teachers a proper 60-day notice.

In the Pauline Fucinari case the local board of education had ordered the dismissal and delivered the certified notice to her well before the 60-day deadline. However, the board action was taken at a closed meeting and thus was clearly improper and void.

The local board did not consider the notice void and refused to consider Pauline's request for reinstatement. With the help of the NFB and Carl Shier—the attorney the NFB retained for Pauline—the case was taken to the Michigan State Tenure Commission. After a hearing and the submission of lengthy briefs, this Commission reversed the local board and ordered Pauline reinstated. The board refused to do this and appealed to the Michigan Circuit Court. Again with the help of the NFB Pauline fought the appeal and won. This was still not enough for the local board, which appealed to the Michigan Court of Appeals. Again the NFB and Pauline fought for the rights of blind men and women, and again there was victory—this time for good.

The Evelyn Weckerly case arose earlier and was decided later. It was a roller coaster of successes and failures before it ended in victory.

Evelyn Weckerly's dismissal had been voted at an open meeting but the postman had failed to deliver to her the certified letter of dismissal until after the 60-day deadline had passed. After the local school board refused to reinstate her, she also decided to fight. With the help of the NFB and Carl Shier, she too was able to win a decision of the Michigan State Teacher Tenure Commission. Unlike Pauline Fucinari, however, she suffered a reversal at the Circuit Court level. This decision was appealed to the Court of Appeals, which first reversed the Circuit Court, deciding in her favor, and then reversed itself, sustaining the school board and Circuit Court. Fortunately that was not the end of it. Permission was sought and granted to appeal the decision to the Michigan Supreme Court. At that level, after almost five years from the date of dismissal, justice was finally done. The Supreme Court unanimously ordered Evelyn reinstated with back pay. Again the barriers fell.

The Fucinari and Weckerly cases were decided on technical grounds, but they did show school officials in Michigan and elsewhere that blind teachers would demand the same rights accorded to every other teacher. And they also showed that the courts would sustain those demands by guaranteeing to the blind the same procedural safeguards provided to every other class of individuals.

These successes also encouraged others to demand their rights. And in several cases those demands, followed by legal action, were sufficient to force settlements that opened the teaching profession to blind individuals.

The first major suit to be brought on the basis of open discrimination against the

blind was that of Judy Miller, who applied to teach in the schools of Denver, Colorado. Her qualifications were as good as or better than any other applicant. Nevertheless, she was denied employment by a school administration that consistently excluded the blind. Fortunately, she did not take no for an answer.

She joined with the NFB in a lawsuit against the superintendent and Board of Education of Denver. She claimed that the school system had no legal right to discriminate against the blind and that such discrimination denied her the equal protection of the laws guaranteed by the Fourteenth Amendment to the U.S. Constitution. The case was the first to be brought in a federal court. This was done to encourage the application of federal constitutional law and to give any final decision broader national impact.

The legal grounds urged in the case had never been applied to discrimination against the blind in any court in the country, so it was impossible to predict what the decision would have been. The school administration of Denver did not want to find out. It surrendered. It signed a settlement eliminating some of the barriers to blind teacher employment in the schools of that city.

It was unfortunate that the settlement precluded a decision by the court that might have set a precedent that could have been used by others in Colorado and around the country. However, it did establish the principle of non-discrimination toward the blind in the schools of Denver and did show blind men and women that determination and a willingness to fight by all legal means could break down the barriers.

The same scenario was enacted in the case of Linda Garschwiler, a highly qualified young college graduate who sought a job as an English teacher at Justice Junior High School in Marion, Indiana. She was invited to an interview only to have the appointment cancelled when it was discovered that she is blind. However, she demanded her rights, asking that schools named for justice practice it as well. With the NFB she brought suit against the school system.

She also relied upon legal theories that had never been applied to the blind before. Like Judy Miller she alleged that exclusion of the blind was a classification on the basis of sight which should be impermissible under the equal protection clause of the Fourteenth Amendment to the U.S. Constitution. She also alleged a new theory, that she had been denied employment because the school system's policy presumed that blind individuals could not be competent teachers. She claimed that this was an "irrebutable presumption" in violation of the due process clause of the Fourteenth Amendment.

Again the determination of a blind individual, the help of the NFB, and the willingness to take legal action were sufficient to force a change in policies. In early February 1976, the school district signed a settlement granting Linda Garshwiler $4,500 in back pay and employing her beginning in the second semester. And the barriers fell.

Both cases were good examples of what an individual and the NFB could do to open teaching opportunities. But of course neither case created a legal precedent that could be used by others faced with discrimination.

That legal precedent was handed down one month later. In the case of *Gurmankin v. Costanzo*, a federal district court finally held that the exclusion of the blind from employment as teachers was a violation of the U.S. Constitution.

Judith Gurmankin had sought employment as a teacher in the Philadelphia school system soon after her graduation from college. There she ran into a policy barring blind applicants from consideration for teaching positions. She renewed her application several times, but each time was summarily rejected. Finally, with the help and encouragement of the NFB and the representation of Jonathan Stein of Community Legal Services, she brought suit against the school system.

Once the suit was brought she also found

that the school administration was willing to make concessions. However, these concessions were more apparent than real and represented no change in actual policy. They allowed her to take two tests to judge her suitability for a teaching position. On the written test she scored near the top one-third. However, on the oral test she was given low marks not because of her lack of knowledge of her subject, but because the examiners judged that a blind person could not handle teaching of sighted children. When the two test scores were used together she was effectively barred from employment. Thus it was clear that if justice were to be done the case would have to be fought through to the finish.

And justice was done by the United States District Court for the Eastern District of Pennsylvania. The court applied the irrebutable presumption doctrine that had been urged in the Garshwiler case. In doing so it relied upon a recent U.S. Supreme Court decision, *Cleveland Board of Education* v. *LaFleur*, 414 U.S. 632 (1974). In that case the Supreme Court had decided that a public school could not presume that a pregnant woman was incapable of teaching past the fourth month of pregnancy. The court noted that while some pregnant teachers might not be physically capable of teaching in the later months, other pregnant teachers would be quite capable. The court thus held that the due process clause of the Fourteenth Amendment to the U.S. Constitution required a more individualized determination.

The Pennyslvania federal court stated that the *LaFleur* doctrine applied squarely to Judith Gurmankin's situation. As it wrote:

"The irrebutable presumption analysis of *LaFleur* is also applicable in the instant case. The school board's policy of totally excluding blind persons as teachers of sighted students created an irrebutable presumption that blind persons could not be competent teachers. However, since the evidence in this case indicates that some blind persons can be successful teachers, the school district's presumption is unconstitutionally broad. Thus even though the school district's apparent goal of insuring that only competent teachers are hired is proper and legitimate, the refusal of the school district to even consider blind persons for teaching positions cannot be justified."

This was a tremendous victory not only for Judith Gurmankin, who was to be offered a teaching job and have an opportunity to claim back pay, but also for the blind of the nation. For the first time a court had found that automatic exclusion of the blind from employment violated constitutional law.

Not surprisingly the Philadelphia school system appealed the case to the U.S. Court of Appeals for the Third District. But as the article following this one reports, the appeal was unsuccessful, and indeed, the district court decision is already being used as a precedent.

The *Gurmankin* case is helping Michael Zorick in Florida. He had applied for a job with the Clay County schools and had actually been hired before the discovery of his blindness led to the loss of the job the day before it was to begin. In the past Mike Zorick might have had to give up. Now, however, with the help of the Federation and with the *Gurmankin* decision to back him up, he has brought suit against the Clay County school system in Florida state court.

The *Gurmankin* decision is also helping James Upshur in California. Thirteen years ago Upshur was appointed to a full-time teaching position in the Oakland public schools. An accident shortly thereafter blinded him and since that time he has been denied any full-time position in the system. He has now completed extensive graduate work and is clearly qualified for a high administrative position, but others have landed the jobs that he no doubt could have had but for his loss of sight. He hasn't given up. Now with the *Gurmankin* decision to back him up, he—like Mike Zorick—has filed suit to vindicate his rights.

Victory in these cases will by no means be automatic. Some courts may be unwilling to apply the constitutional doctrine of irrebutable presumption. The Supreme Court itself may retreat from the doctrine as it becomes more conservative on constitutional issues. Already it has distinguished the *LaFleur* case in *Weinberger* v. *Salfi*, 422 U.S. 749 (1975), holding that it was not an irrebutable presumption to automatically find that marriages of less than nine months are not sufficiently legitimate to qualify surviving spouses and step-children for survivors' benefits under the Social Security Act.

It is clear therefore that in the future greater reliance must be placed on statutory remedies. And where these remedies do not exist, efforts must be redoubled to enact them.

The strongest of the statutory remedies is to be found in section 504 of the Rehabilitation Act of 1973, 29 USC 794. That section provides:

"No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

The application of this statute is now being urged in the Zorick and Upshur cases, but how the courts will apply section 504 is yet to be seen. With the finalization of regulations under section 504 (as discussed elsewhere in this issue), it will likely be held that the statute cannot be applied in court until all administrative remedies under the regulations have been exhausted.

Fortunately the final regulations clearly provide for a complaint procedure. If this procedure is properly staffed and if it is administered by individuals who understand discrimination against the blind, the administrative route could turn out to be more productive than the courts.

The 504 regulations adopt by reference the procedures of title VI of the Civil Rights Act of 1964, after which section 504 was modeled. Section 80.7(b) of the regulation implementing title VI provides:

"Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible department official or his designee a written complaint. A complaint must be filed within 180 days from the date of the alleged discrimination unless the time for filing is extended by the responsible department official or his designee."

Other sections of the regulations require a prompt investigation and prohibit intimidation of the complaining party. Strong enforcement mechanisms are also provided. Federal grants to the discriminating school district can be suspended and HEW can recommend that the Department of Justice bring legal action to force the school district to comply with the law.

Of course if HEW does not investigate the complaint, or rejects it on the merits, or fails to follow up, lawsuits can still be brought under the provisions of section 504 on the grounds that administrative remedies have been exhausted.

There are also state and local statutes prohibiting discrimination against the blind in public employment. Foremost among these is the model white cane law, which the NFB has pioneered throughout the country. It provides:

"The blind, the partially blind, and physically disabled shall be employed in the state service, the service of the political subdivisions of the state, in the public schools, and all other employment supported in whole or in part by public funds, on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work required."

In many states and municipalities there are also civil rights and human rights ordinances applicable to discrimination against the blind. Civil rights and human rights commissions have been established to enforce

the provisions of these statutes and ordinances, and in many areas, the provisions of the model white cane law as well. These commissions are empowered to investigate complaints, hold hearings, and order relief not only for the complainant but for all persons similarly situated.

Last year in Connecticut Ellen Beth (Steinberg) Schuman sought to use that state's human rights procedure to break down the barriers to teacher employment. She had been employed at the Oak Hill School for the Blind at the upper level (grades 7-12) as a teacher's aide. When that position was abolished, she sought the same employment at the lower level (grades 1-6). There she found that her blindness excluded her. With the help and encouragement of the NFB, she brought a complaint to the Connecticut Commission on Human Rights and Opportunities alleging a violation of the state's fair employment practices statute. After an investigation and a five-day hearing, the Commission's hearing examiner ordered the school to cease and desist from its discriminatory practices, to pay Ellen Beth Schuman $2,800 in back pay, to present a list of positions open at the school along with physical criteria for filling those positions, and to prepare and submit within two months an affirmative action plan that would include the blind.

With this decision the barriers fell for Ellen Beth Schuman as they had for Pauline Fucinari, Evelyn Weckerly, Judy Miller, Linda Garshwiler, and Judith Gurmankin. They fell as they have and will for other blind men and women across the nation.

These victories provide a clear answer to the question, Why the National Federation of the Blind? For without the National Federation of the Blind this line of cases would not have been possible.

Some of the cases were financed by the NFB, and those that were not received its assistance in the courtroom in the form of testimony from representatives of the NFB Teachers Division and from outside experts. The Federation also helped establish communication between the lawyers in the cases, provided them with background information, and brought several to Des Moines to educate them about blindness and the capabilities of blind teachers. And the Federation provided assistance to the blind persons who brought the suits, encouraging them to fight on when many forces were pressing them to go back and to give up.

Finally, of course, even if the NFB had not been directly involved in these lawsuits, it would have had an impact on them. Thirty-seven years of organization and education have made a difference in the way the public views the blind and in the way the blind view themselves. The public is finally realizing that the blind will not be content with charity and menial work. The blind know, and the public is beginning to know, who the blind are and that they will never go back.

The last 22 years have seen many victories. Yet the struggle to open the teaching profession to the blind is far from over. Misconceptions and prejudice are forces not easily defeated in the struggle for human advancement. But in a generation Federationists have accomplished what President Jernigan predicted more than two decades ago. They have moved a step closer to achievement of their final goal: the full participation of the blind as equal partners in society. □

GURMANKIN DECISION UPHELD BY U.S. COURT OF APPEALS

[The following article is reprinted from the Philadelphia *Evening Bulletin* of April 26, 1976, and was written by *Bulletin* staff writers Michael B. Coakley and Harmon Y. Gordon.]

It wasn't as difficult for Judith Gurmankin to overcome her blindness as it was for her to beat the system. Yesterday, she won.

"Some sighted people will never believe that a blind person should be around," said

Ms. Gurmankin, 33. "But that's an ignorant person." Today, Ms. Gurmankin is around Philadelphia's Olney High School doing the thing she's wanted to do since she was very young: teaching.

A U.S. Third Circuit Court of Appeals decision yesterday assured that she will continue to be around for some time to come. The decision, written by Judge John J. Gibbons, upheld an April 1976 U.S. District Court ruling that the Philadelphia School District had violated Ms. Gurmankin's rights by depriving her of due process in seeking a teaching position because of her blindness.

The appeals court affirmed her right to teach and upheld the earlier ruling that dated her seniority to September 1970, shortly after she first applied for a school district teaching job.

The April 1976 ruling was appealed by the school district, which contended it had not deprived Ms. Gurmankin of due process, and by Ms. Gurmankin herself, who asked that her seniority be dated to 1968, when she first applied for a teaching position. The appeals court also said the blind English teacher should be offered a position in one of six city high schools of her choice.

That part of the ruling really doesn't affect her, said Ms. Gurmankin. She started teaching five weeks ago at Olney High, "my first choice," and plans to stay, she said.

"I think it's gone pretty smoothly," she said of the past few weeks at the school. "I think I'm relating well to the students, who are wonderful." She said her father had attended Olney High.

Ms. Gurmankin was blinded at the age of 12 by a disease that causes the gradual deterioration of the eye retina. It was shortly after that, she said, that she wanted to become a teacher. "I thought I could be a little more sensitive and creative than some of the teachers I had," said Ms. Gurmankin, who was educated in Philadelphia public schools.

She graduated from Temple University in 1968 and applied to Philadelphia to do her student teaching and get her teaching certification. Her application was denied, she said. Ms. Gurmankin did her student teaching in Schwenksville, Montgomery County.

Currently, she said, she is working as a full-time auxiliary substitute at the school, "which is, I sub for whoever's out." During the five weeks she's been at Olney, she said, she's taught English, math, and social studies. She agreed that a sightless teacher in a sighted school will encounter some problems, but added, "I know a blind person can handle these things."

The high point of her teaching career to date, she said, came recently when she received a letter from a class of retarded children she taught last year as a substitute. □

O NAC, WHERE IS THY STING?

The pathetic travail of the Tennessee School for the Blind has previously been described for *Monitor* readers [August and December, 1975] and its story of political intrigue and overweening personal ambition recounted in some detail. The Tennessee School for the Blind is, to its everlasting shame and detriment, accredited by NAC; and NAC has as usual contributed its share of confusion to the mix, displaying its customary equivocation through the statements of its on-site review team and Commission on Accreditation. It now appears there have been further developments which warrant reporting to the organized blind of the nation since they illustrate clearly the real character of NAC, which, when it has any effect at all on schools or agencies, generally has a negative one.

To begin with, concerned people in Tennessee report that $550,000 of capital outlay funds previously appropriated by the state legislature to the school have now been irrevocably lost, largly as a result of careless recommendations included in the report of NAC's on-site review team, released

in the spring of 1975 (this is discussed in detail in the article in the August 1975 *Monitor*). Those funds have now been reassigned to the State Building Commission for reallocation. The blind children of Tennessee and their parents certainly can thank NAC for this "assistance" in their receiving a full education.

Even more interesting forces are currently at work, however, and the blind of Tennessee—for too long simply used by politicians and ambitious "professionals" in the field of work with the blind—have the feeling they have been here before. They also remember that Mr. Clay Coble, the most responsive superintendent in the school's recent history, recommended de-NACing TSB, but that the recommendation was ignored—nay, withheld from public view—by the State Commissioner of Education (a political appointee, not an elected official). Mr. Coble's successor has (one suspects, with a great deal of outside guidance) at least tacitly supported NAC accreditation. Recent events in this affair, however, cast grave doubt upon the often-heard assertion that NAC accreditation is essential to maintenance of high standards in the field.

While NAC has blithely renewed the accreditation of TSB with rather full knowledge of the chaotic state of its governance, the Southern Association of Colleges and Schools, which heretofore has also accredited the school, has now placed it on probation and given the administration until September 1, 1977, to remove the deficiencies cited. If the deficiencies are not removed by that date, the reviewing committee will recommend the school be dropped from accreditation altogether.

What are these deficiencies? Aside from some relatively minor problems cited in the Southern Association's letter to the superintendent, it develops that someone has reported the school deficient in the two areas which historically have led to almost automatic loss of accreditation. First, the Association notes "the possibility that interference in the employment of personnel could occur," and such interference is considered a serious violation of standards. Those familiar with this school and its political milieu will readily admit that various types of interference did most clearly occur in the discharge of the preceding administration; therefore, one can now certainly credit the Association's finding. One wonders why NAC has been afraid to deal with this critical problem.

Secondly, the Association's letter cites a violation of its standard requiring the administrative head of an accredited school to "have earned at least 15 semester hours of graduate credit with emphasis on school administration and supervision either as a part of the master's program or in addition thereto." The fact that this is essentially a silly rule is beside the point. The school agreed to abide by this rule and is now being called to account for apparently ignoring it. Isn't this about where things were in 1975 when NAC made its "helpful" visit to the school?

The evidence clearly indicates that NAC has been well informed about the first of these major deficiencies for quite some time now. And NAC threatened loudly to remove accreditation over essentially the same type of issue as the second one cited [see the Jack Birch letter in the August 1975 *Monitor*]. NAC has since denied this, but the record has been built and speaks quite clearly to the matter. What, one asks, does it take to warrant even probation from NAC? And what utterly monstrous act would it take to bring loss of accreditation? One is tempted to cry out with one of Tennessee's famous governors, "How long? Oh, how long?"

NAC will probably forever be issuing commendations to and making excuses for accredited schools and agencies which simply agree to pay its exorbitant fees. The blind are apparently supposed to ignore the fact that some of these are in grave trouble with respectable accrediting bodies and with the blind they purport to serve. It is time that agency heads and boards asked just what kind of accreditation it is they are paying for if anyone with the money can get and keep it. □

RECIPE OF THE MONTH

by JOSEPHINE ARALDO

Note: Josephine Araldo is a partially sighted naturalized French woman who teaches cooking classes in San Francisco. She is regarded as one of the world's finest chefs. In the first decade of this century she studied in Paris with the legendary Henri-Paul Pellaprat, founder of the Cordon Bleu Cooking School, later working as Pellaprat's assistant when he catered to the titled houses of France. Immigrating to the United States in the 1920's, Madame Araldo cooked for a number of wealthy families in California. From this comes her favorite anecdote: One of her employers observed her at work and exclaimed, "Josephine, you keep putting your hands in the food!" To which Josephine replied, "What else can I do, Madame; I cannot use my feet." In the estimation of the editor, the recipe printed here makes the best cake there is. It can be frozen or refrigerated for long periods, although it should be warmed to room temperature before serving.

BRITTANY POUNDCAKE

Ingredients

1 cup sugar
6 egg yolks
½ pound unsalted butter
1½ cups white flour
½ cup Myers' dark rum
1 tsp. cream and an eggwhite

Combine the sugar and egg yolks thoroughly, until the mixture is smooth (several hundred strokes of a spoon, or use a mixer for several minutes). Add the butter (which has been warmed until it is the consistency of mayonnaise) and again beat until smooth. Gradually add the flour and then the rum, and once again beat until the batter is thoroughly free of lumps. Pour into a 9-inch round baking pan. Glaze the top with a thin layer of a mixture of cream and eggwhite. Draw the tines of a fork across the surface in two directions to form a grid pattern. Bake for from 60 to 90 minutes in the center of an oven heated to 325 degrees. If your oven is poorly insulated, turn the pan occasionally. The cake is done when the center is firm and the glaze is golden brown. A toothpick stuck into the center should come out clean. Let the cake cool before eating. If you undercook it, the center will be soggy, but soggy with rum, which is a minor failing. Bon appetit! □

MONITOR MINIATURES □□□□□□□□

□ On Sunday, July 3, the Cultural Exchange and International Program Committee (CEIP) will hold its annual wine and cheese tasting at the Braniff Place in New Orleans. The event will occur between 4:00 and 8:00 p.m.; the exact location will be printed on the tickets which will be available at the

Convention registration desk or may be purchased from any CEIP Committee member.

☐ Marj Schneider of Minneapolis writes that she would like to meet with other blind feminists at the Convention, to discuss problems and issues of concern to women who are blind. The time and place will be arranged at the Convention.

☐ Don Queen of San Diego proposes that a meeting of blind persons in public employment be held at the Convention. The group would focus on the growing problems of dealing with recent affirmative action and non-discrimination laws passed by Congress. The group would not include blind teachers. Again, time and place will be arranged at the Convention.

☐ The Grant Committee of the Smithsonian Institution sends its thanks to those Federationists who took part in their recent survey intended to make museums more valuable to the blind. The information received will be made into guidelines which will be circulated to museums across the country.

☐ Mike Smith writes that the International Christian Braille Mission (ICBM) is eager to buy used Perkins braillers. Send information about the condition of your machine, its serial number, and your address to: Mike Smith, ICBM, Boulevard Church of Christ, Kanawha Boulevard and Vine Street, Charleston, West Virginia 25302. Also write if you would like free Braille Christian literature, including the monthly magazine *We Would See Jesus.*

☐ The Jewish Braille Institute of America announces the publication of a magazine on 8 rpm flexible discs, patterned after its Braille magazine, the *Jewish Braille Review.* The new magazine will focus on Jewish and related topics, commentary on current events, and items written by blind authors. Write to Jewish Braille Institute of America, 110 East 30th Street, New York, New York 10016.

☐ The NFB of Illinois is selling smoke detectors with a lifetime guarantee for $69.95 plus tax. This battery-operated unit has both a visual and audible signal when the batteries go dead. For information, contact Carl Miller, R.R. 2, Sportsman Club Road, Bourbonnais, Illinois 60914; telephone (815) 939-1150.

☐ The NFB of North Carolina announces a change of plans for its 1977 convention. It will be held at the Ramada Inn Coliseum, 3501 East Independence Boulevard in Charlotte, September 23-25. Rates are $18 singles, $23 doubles. For reservations, call (tollfree) (800) 228-2828. Dick Edlund will be national representative.

☐ The Riverbend Chapter of the NFB of Minnesota was organized February 19, to serve members in the Mankato-St. Peter area. The officers are Dr. James Goff, president; Jim Tracy, vice-president; and Shirley Decker, secretary-treasurer. This marks another step in bringing the NFB to non-metropolitan Minnesota.

☐ On March 5th, the NFB of Illinois organized the Corn Belt Chapter in the Bloomington-Normal area. State secretary Ruth Swenson was elected president. Other officers are: Rita Howells, vice-president; Cindy Freeman, secretary; Peg DeRosa, treasurer; and board member, Jeanne Marquis. ☐

NFB PRE-AUTHORIZED CHECK PLAN. This is a way for you to contribute a set amount to the NFB each month. The amount you pledge will be drawn from your account automatically. On the other side of this card, fill in the amount you want to give each month and the day of the month you want it to be drawn from your account. Sign the card in two places, where the X's are. The rest will be filled in by the NFB Treasurer. Enclose a voided check with the card, and mail it to Richard Edlund, Treasurer, National Federation of the Blind, Box 11185, Kansas City, Kansas 66111. Your bank will send you receipts for your contributions with your regular bank statements. You can increase (or decrease) your monthly payments by filling out a new PAC Plan card and mailing it to the Treasurer. Also, more PAC Plan cards are available from the Treasurer.

INDEMNIFICATION AGREEMENT

To bank named on the reverse side:

In consideration of your compliance with the request and authorization of the depositor named on the reverse side, the NATIONAL FEDERATION OF THE BLIND will refund to you any amount erroneously paid by you to The National Federation of the Blind on any such check if claim for the amount of such erroneous payment is made by you within twelve months from the date of the check on which such erroneous payment was made.

Authorized in a resolution adopted by the Board Members of the National Federation of the Blind on November 28, 1974.

THE NATIONAL FEDERATION OF THE BLIND

BY: _____

Treasurer